

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DONNA CARUSO,

Plaintiff,

-against-

TARGET CORPORATION,

Defendant.

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LINDSAY, Magistrate Judge:

Before the court is the defendant's letter motion dated October 15, 2013, seeking to compel Ricky Madhok, M.D., a non-party witness, to comply with a subpoena to testify at a deposition. Plaintiff's counsel has not responded to this application on behalf of either plaintiff or the non-party witness. Defendant's motion is granted.

By way of background, Dr. Madhok is plaintiff's treating physician and performed spinal surgery on plaintiff allegedly as a result of the subject accident. On June 26, 2013, Dr. Madhok was served with a subpoena to testify at a deposition on July 23, 2013. Defense counsel's office called Dr. Madhok on July 10, 2013 to confirm his appearance at the deposition, but was informed that Dr. Madhok would be out of the country on the scheduled date and requested that the deposition be rescheduled to August 7, 2013. Attempts by defense counsel's office to contact Dr. Madhok on August 6, 2013 and August 7, 2013 to confirm his appearance at the deposition were unsuccessful. Thereafter, defense counsel sent a letter to Dr. Madhok on August 21, 2013 advising him that the deposition was rescheduled for August 29, 2013. Attempts by defense counsel to confirm Dr. Madhok's appearance at the deposition were again unsuccessful. Defense counsel appeared to conduct Dr. Madhok's deposition on August 29, 2013, but after 40 minutes Dr. Madhok had failed to appear. Defense counsel continued to make further attempts to contact Dr. Madhok to reschedule the deposition, but to no avail. Although on September 4, 2013, Dr. Madhok called to reschedule the deposition, he failed to respond to defense counsel's requests for an available date to conduct the deposition. It appears that while Dr. Madhok indicated on two occasions his willingness to reschedule the deposition, he has failed to return telephone calls or cooperate with defense counsel despite defense counsel's repeated attempts over three months to schedule his deposition at his convenience. Accordingly, upon receipt of this order, defense counsel, plaintiff's counsel and Dr. Madhok are directed to meet and confer to determine a date certain for the deposition of Dr. Madhok which is to be held on or before November 27, 2013. The witness is warned that failure to comply with this order may result in the imposition of sanctions. The plaintiff is further cautioned that Dr. Madhok's failure to appear for a deposition may result in a report and recommendation that plaintiff be precluded from calling Dr. Madhok at trial or offering his testimony or medical records at trial. Plaintiff's counsel is directed to personally serve a copy of this order on Dr. Madhok forthwith.

Dated: Central Islip, New York
November 12, 2013

SO ORDERED:

_____/s/_____
ARLENE ROSARIO LINDSAY
United States Magistrate Judge